SUPREME COURT, U. S.
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No 73-1155

In the Supreme Court of the United States

OCTOBER TERM, 1973

BERNICE ESPY HICKS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General.
Department of Justice,
Washington, D.C. 20530.

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The sole issue presented by the petition is the factual question of the value of closely held corporate stock for federal estate tax purposes.

At the time of her death, the decedent, Pearle M. Espy, held an interest in 11,100 shares of stock in Espy Ice Company and 138 shares in City Ice Company, both closely held family corporations. These corporations owned extensive real property, all of which had been held for many years and had appreciated far beyond the amounts shown on the corporations' books. Some of the property was essentially unproductive and could have been sold by the corporations without affecting their businesses (Pet. App. A1-A2, B3-B5). Both the district court and the court of appeals upheld the Commissioner's valuation, which was supported by expert testimony (Pet. App. A1-A15; Pet App. B1-B8).

2. Petitioner contends (Pet. 5-6) that the decision below conflicts with *Central Trust Co.* v. *United States*, 305 F. 2d 393 (Ct. Cl.) and *Righter* v. *United States*, 439 F. 2d 1204 (Ct. Cl.). In those cases, the Court of Claims recognized, as did the decision below (Pet. App. B5-B6), that the valuation of closely held corporate stock is a question which must be resolved on its own particular facts. With respect to the valuation of such stock, the Court of Claims did not look solely to its earnings and dividends, as petitioner argues (Pet. 6). Unlike the corporations considered by the Court of Claims in the cited cases, the corporations here each owned real property that had substantially appreciated above its book value, some of which was unproductive and unrelated to the business they conducted. As a result, both courts below were amply justified in considering the actual value of this real property in valuing the stock. See, *e.g.*, *Hamm* v. *Commissioner*, 325 F. 2d 934 (C.A. 8), certiorari denied, 377 U.S. 993; *In re Nathan's Estate*, 166 F. 2d 422 (C.A. 9); Treasury Regulations on Estate Tax, §20. 2031-2(f).[1]

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MARCH 1974.

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[1] Petitioner's further suggestion of a potential conflict between the estate tax and the federal antitrust law (Pet. 6-8) rests upon the speculative premise that the estate tax forces the sale of closely held corporate stock or the corporate assets to competitors. There is no basis for this assumption in this case and petitioner cites no authority in support of the proposition.